

## REMARKS

Claims 1-87 remain pending in the present application. Reconsideration and further examination is respectfully requested in light of the following remarks.

### **Section 121 Restriction Requirement:**

In response to the Examiner's restriction requirement under 35 U.S.C. § 121, Applicants elect **with traverse** the alleged species defined by the Examiner as "structuring message transport system ... such as set up messaging transport stream through multi nodes, including firewall, broker, web site and proxy server." Since none of the claims recite any features that are mutually exclusive from this alleged species as defined by the Examiner, claims 1-87 are all either generic to or read upon the elected alleged species.

The Examiner's restriction requirement is improper because the alleged species as defined by the Examiner are not disclosed as actual species in the present application. **By definition, species must have mutually exclusive characteristics.** According to M.P.E.P. § 806.04(f):

The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species. (emphasis added).

Note that "mutually exclusive characteristics" is a requirement of the species as described in the disclosure. "Mutually exclusive characteristics" does not mean that one claim recites a limitation not expressly recited in another claim.

The three alleged species as defined by the Examiner are not described in the specification as having mutually exclusive characteristics. For example, as described in

the specification, packets may be sent through multiple nodes including, e.g., a proxy or firewall (alleged Species I) and may also include sequence information (alleged Species II) and may also be buffered on one of the nodes (alleged Species III). It is clear from even a cursory reading of Applicant's disclosure that these features are not mutually exclusive. For instance, Applicant's disclosure clearly does not require that if a packet is sent through a firewall it cannot include sequence information. Thus, the alleged species as defined by the Examiner do not have mutually exclusive characteristics under Applicant's disclosure and cannot be a proper basis for restriction. Withdrawal of the restriction requirement is respectfully requested.

## CONCLUSION

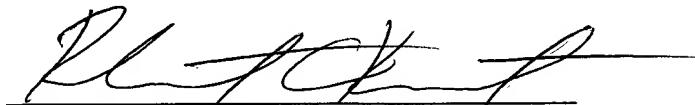
Applicant submits the application is in condition for allowance, and early notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-91600/RCK.

Also enclosed herewith are the following items:

- Return Receipt Postcard
- Petition for Extension of Time
- Notice of Change of Address
- Fee Authorization Form authorizing a deposit account debit in the amount of \$ for fees (      ).
- Other:

Respectfully submitted,



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